

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

| | | |
|----------------------------------|---|------------------|
| CARMEN DANIELS, |) | |
| |) | 03C-08-007 (JTV) |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| SEACOAST CAB COMPANY, INC., |) | |
| a Delaware corporation, JAMES W. |) | |
| BROWN, EVANSTON INSURANCE |) | |
| COMPANY, a foreign corporation, |) | |
| ESSEX INSURANCE COMPANY, a |) | |
| Delaware corporation, and |) | |
| CHRISTOPHER HEWITT, |) | |
| |) | |
| Defendants. |) | |

Submitted: September 11, 2006

Decided: January 31, 2007

William D. Fletcher, Jr., Esq., Schmittinger & Rodriguez, Dover, Delaware.
Attorney for Plaintiff.

Daniel A. Griffith, Esq., Marshall, Dennehey, Warner, Coleman & Goggin,
Wilmington, Delaware. Attorney for Defendants.

Upon Consideration of Plaintiff's
Motion For Re-argument
DENIED

VAUGHN, President Judge

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ORDER

Upon consideration of the plaintiff's motion for re-argument, the defendant's response, and the record of the case, it appears that:

1. The plaintiff moves for re-argument of the Court's order which granted the defendant's motion for summary judgment.¹

2. The facts of the case are set forth in the order.² Briefly, on August 11, 2001, the plaintiff was a paying passenger in a taxi cab owned by defendant Seacoast Cab Company ("Seacoast"). While traveling through an intersection the taxi was struck by defendant Christopher Hewitt, an uninsured motorist. Defendant Evanston Insurance Co. ("Evanston") is the insurance provider for Seacoast. Seacoast did not have uninsured motorist coverage because it was rejected by G. Thomas Brown, the president of Seacoast.

3. Plaintiff alleged that there was no valid waiver of uninsured motorist ("UM") coverage. He argued that there was no valid offer or rejection of UM coverage as required by Delaware law.³ Further, plaintiff alleged that Seacoast was not legally created at the time of the rejection and, therefore, it is not valid.

4. In its order granting the defendant's motion for summary judgment, the Court rejected all of the plaintiff's contentions. In doing so, the Court held, that the rejection signed by Mr. Brown was valid and effective in accordance with § 3902.

¹ *Daniels v. Seacoast Cab Co.*, C.A. No. 03C-08-007 Vaughn, P.J.(July 27, 2006).

² *Id.*

³ 18 *Del. C.* § 3902.

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The Court also decided that the incorporation status of Seacoast at the time of the rejection of UM coverage was legally immaterial.

5. In this Motion For Re-argument, the plaintiff contends that the Court misinterpreted the requirements of Delaware law. Plaintiff argues that the law requires a “meaningful offer” of UM coverage.⁴ Plaintiff also argues that he offered documentation showing that the Seacoast Cab Company was not in existence at the time that the UM coverage was rejected.

6. The plaintiff is requesting Re-argument under Superior Court Civil Rule 59(e), which permits the court to determine from the motion and answer whether re-argument will be granted. A Motion For Re-argument “is not a device for raising new arguments or stringing out the length of time for making an argument.”⁵ In Delaware, re-argument will generally be denied “unless it is shown that the Court overlooked a precedent or legal principle that would have controlling effect, or that it has misapprehended the law or the facts such as would affect the outcome of the decision.”⁶ A motion for Re-argument should not be used merely to “rehash the arguments already decided by the court.”⁷

7. After considering the plaintiff’s contentions, I remain convinced that the

⁴ 18 *Del. C.* § 3902(b).

⁵ *Beatty v. Smedley*, 2003 Del. Super. LEXIS 437, at *5.

⁶ *Citifinancial Mortgage, Co. v. Edge*, 2004 Del. Super. LEXIS 67, citing *Monsanto Co. v. Aetna Cas. And Sur. Co.*, 1994 Del. Super. LEXIS 261 (Jan. 14, 1994) (quoting *Wilshire Restaurant Group, Inc. v. Ramada, Inc.*, 1990 Del. Ch. LEXIS 212 (Dec. 1990)).

⁷ *McElroy v. Shell Petroleum, Inc.*, 1992 Del. LEXIS 449.

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rejection of the UM coverage was valid and effective. Delaware law requires an insurance company to provide a minimum UM coverage unless it is rejected by the insured.⁸ The record establishes that the day before Seacoast's coverage began, UM coverage was rejected in writing by G. Thomas Brown. An affidavit was signed by Bernard Geis, an employee of H & W Underwriting Services, Inc., stating that he was personally involved in the transaction for insurance to Seacoast. The affidavit recites that Mr. Geis received the signed and dated rejection form which was accepted for the issuance of an insurance policy by Evanston insuring Seacoast, that he was personally familiar with Mr. Brown's signature and that Mr. Brown's signature was routinely accepted as an authorizing signature for Seacoast regarding the issuance of the insurance policy.

8. The plaintiff contends that *Johnson v. AIG Ins. Co.*,⁹ one of the cases cited in the court's order, is distinguishable because that case involved an assigned risk policy. I acknowledge that *Johnson* involved an assigned risk policy. My analysis of *Johnson* is that it relies in part upon that fact, but only in part. It also relies upon the language of the statute. Subsection (a) of 18 *Del. C.* § 3902 does not require an offer like subsection (b). The court in *Johnson* relied upon that factor as well. This is apparent from the paragraph of the opinion which I quoted in my order. I am not persuaded that the "meaningful offer" requirement which the Supreme Court

⁸ 18 *Del. C.* § 3902(a).

⁹ *Johnson v. AIG Ins. Co.*, 2004 Del. Super. LEXIS 237.

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recognized in *Mason v. United States Automobile Association*¹⁰ in connection with subsection (b) also applies to subsection (a). Subsection (a) does require an express rejection in writing, and I find that such a rejection occurred in this case. I find *Mason* distinguishable because it construed subsection (b), not subsection (a).

9. The plaintiff also restates the contention that the rejection of uninsured motorist coverage was invalid because Seacoast Cab Company was not incorporated until after the rejection occurred. The policy in question was issued in September 2000, and the rejection of uninsured coverage occurred in connection with the issuance of the policy at that time. Seacoast Cab Company was not incorporated until May 2001, eight months later.

10. When I said in the order that the plaintiff has not offered any authority to support this contention, I meant that the plaintiff had not offered any authority to support the legal conclusion that the subsequent incorporation renders the rejection invalid. I acknowledge the fact that Seacoast Cab Company was not incorporated until after the rejection of uninsured coverage took place.

11. I remain unpersuaded, however, that the rejection of uninsured coverage should be deemed invalid for this reason. It appears from the record that all acts relevant to this case performed under the name Seacoast Cab Company were performed by G. Thomas Brown. The plaintiff's contention would seem to lead to the conclusion that Mr. Brown's ordering of the policy on behalf of Seacoast Cab Company was valid and the policy issued effective, but that his rejection of uninsured

¹⁰ 697 A.2d 388 (Del. 1997).

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motorist coverage in connection with that same policy was invalid, a result I find inconsistent. As stated in the order, the plaintiff offers no legal authority to support her contention. In addition, I am persuaded that the subsequent incorporation of Seacoast Cab Company implicitly acted to ratify and confirm any perceived corporate defect in the rejection of uninsured coverage.

12. In the order, I stated that the failure of Seacoast Cab Company to have yet been incorporated when the policy was issued and the uninsured motorist coverage rejected was legally immaterial. In retrospect, this choice of words was perhaps not the most effective way to express my opinion. For the reasons given in the order and now this order, however, I remain persuaded that the sequence of rejection of uninsured motorist coverage in September 2000 followed by incorporation in May 2001 does not render the rejection of coverage ineffective.

13. Therefore, the plaintiff's motion for re-argument is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File